

1 QUENTIN C. PAIR
2 Environmental Enforcement Section
3 Land and Natural Resources Division
4 U.S. Department of Justice
5 Washington, D.C. 20530
6 202/633-1999

7 ATTORNEY FOR PLAINTIFF
8 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 JOHN R. CAUFFMAN, et al.,)
15 Defendants.)

16 CASE NO. CV-83-6318-KN (BX)
17 CONSENT DECREE

18 (PROPOSED)

19 JOHN R. CAUFFMAN, et al.,)
20 Defendants.)

21 AND RELATED THIRD-PARTY AND
22 CROSS-CLAIM ACTIONS.

23 1. On September 30, 1983, the plaintiff, the United
24 States of America, on behalf of the United States Environmental
25 Protection Agency ("EPA"), filed the complaint in this case
26 against defendants John R. Cauffman, John R. Cauffman, as
Trustee, Bill G. Boyer, Judy Boyer and Marathon Cartage
Corporation pursuant to section 108 of the Comprehensive
Environmental Response, Compensation and Liability Act of 1980
("CERCLA"), 42 U.S.C. § 9607, to recover cleanup costs incurred by
plaintiff pursuant to section 104 of CERCLA, 42 U.S.C. § 9604.
These costs had been incurred by the EPA and its contractors in
connection with a cleanup action, undertaken between July 1981
and January 1982 pursuant to section 104 of CERCLA, which was

FILED

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MAY 4, 1988

CLERK, U.S.

DIST. COURT

U.S. DISTRICT COURT

CLERK, U.S. DISTRICT COURT

AUG 3 1988

CENTRAL DISTRICT OF CAL.

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Attorney
General
9/2/88

1 deemed necessary to protect the public health, welfare or
2 environment at the site located at 12605 Marquart Avenue, Santa
3 Fe Springs, California ("site").

4 2. Following the filing of this lawsuit by the
5 plaintiff, third-party complaints were filed or threatened to be
6 filed seeking contribution and indemnity from third-party
7 defendants Inmont Corporation (Inmont Division, BASF
8 Corporation), United Technologies Corporation, Carrier
9 Corporation, Cerritos Valley Bank, City of Sante Fe Springs,
10 Phillip A. Homme Company and Henry Luna.

11 3. The plaintiff, the defendants, and the third-party
12 defendants (hereafter "the parties") each and all recognize that
13 it is in their interest, the public interest and consistent with
14 the National Contingency Plan to avoid the expense of further
15 litigation and to enter into this Consent Decree.

16 4. The parties therefore request the entry of this
17 Consent Decree by the Court without trial or adjudication of any
18 fact or the liability of any signatory hereto.

19 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
20 as follows:

21 I. JURISDICTION

22 This Court has jurisdiction over the parties and subject
23 matter of this action. The complaint states a claim upon which
24 relief may be granted.

25 II. BINDING EFFECT

26 This Consent Decree applies to and is binding upon the
27 undersigned parties and their successor and assigns. Each of the
28

undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree.

III. REIMBURSEMENT & STIPULATED PENALTIES

A. Reimbursement

The settling defendant and third-party defendants agree to and shall pay to the "Hazardous Substances Superfund" (the "Fund") the total sum of \$1,049,750.00. This sum is to be paid by each of the settling parties as follows:

John R. Cauffman and

John R. Cauffman, Trustee	\$ 450,000
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Bill Boyer, Judy Boyer and

Marathon Cartage	371,250
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Inmont Corporation (Inmont

Division, BASF Corporation),

United Technologies Corporation,

and Carrier corporation	200,000
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Phillip Homme Company and

Henry Luna	17,500
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City of Santa Fe Springs	10,000
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Cerritos Valley Bank	<u>1,000</u>
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TOTAL PAYMENT	\$1,049,750
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John R. Cauffman and John R. Cauffman, Trustee, shall make payments and deliver such by check to the Fund according to the following schedule:

1 1. Not later than thirty (30) days after entry of this
2 Consent Decree the sum of seventy five thousand dollars
3 (\$75,000);

4 2. Not later than ninety (90) days after entry of this
5 Consent Decree the additional sum of one hundred seventy five
6 thousand dollars (\$175,000); and

7 3. Not later than one hundred eighty (180) days after
8 entry of this Consent Decree the additional sum of two hundred
9 thousand dollars (\$200,000).

10 All other settling defendants and third-party defendants
11 shall each make a single payment of their allotted sums and
12 deliver such by check to the Fund not later than thirty (30) days
13 after entry of this decree.

14 Payment shall be made to the Fund by certified or
15 cashier's check. The checks shall make specific reference on
16 their face to the "General Disposal Site" and "DOJ #90-11-2-1."
17 Each check must be delivered to the plaintiff as scheduled above
18 at the following address:

19 U.S. Environmental Protection Agency
20 Superfund Accounting
21 P.O. Box 371003M
22 Pittsburgh, PA 15251

23 B. Stipulated Penalties

24 Failure on the part of John R. Cauffman and John R.
25 Cauffman, Trustee, to make each and any of the installment
26 payments in accordance with the schedule set forth in
27 subparagraph A. herein, shall subject him personally and as
28 trustee to the following schedule of stipulated penalties:

	<u>No. of days after payment due</u>			<u>Fine</u>
1	first	through the seventh	(1st wk)	\$ -0-
2	eight	" " fourteen	(2nd wk)	1, 000
3	fifteenth	" " twenty-first	(3rd wk)	2, 000
4	twenty-second	" " twenty-eight	(4th wk)	3, 000
5	twenty-ninth	" " thirty-fifth	(5th wk)	4, 000
6	thirty-sixth	" " forty-second	(6th wk)	5, 000
7	forty-third	and every seventh thereafter		6, 000
8		(7th wk & every additional wk thereafter)		

9 Failure on the part of any of the other settling parties
10 to make any of their payments in timely fashion shall subject
11 them to the imposition of civil penalties in the amount of
12 \$500.00 per day for each day the payment is late.

13 Each of the settling defendants and third-party
14 defendants shall file Notice of Payment with the Court with
15 service on plaintiff and all other parties. Plaintiff shall be
16 served at the address set forth in paragraph IX herein.

17 IV. COVENANT NOT TO SUE AND
18 DISMISSAL OF ACTION

19 Effective upon receipt of each party's payment in full,
20 as set forth in paragraph III, the plaintiff covenants not to
21 bring any civil or administrative action against that party for
22 any claim for the recovery of past costs incurred by the
23 plaintiff in connection with the cleanup action at the site
24 referred to in paragraph I, including costs and attorney fees
25 incurred in the prosecution of this action.

26 Upon the plaintiff's receipt of the total settlement sum
27 of \$1,049,750, this action shall be dismissed in its entirety.
28

1 V. PLAINTIFF'S RESERVATION OF RIGHTS

2 Although the EPA expressly reserves all rights to
3 conduct investigations and other future response actions at the
4 site, at present neither the EPA nor the other parties to this
5 action are aware of the need for further remedial action. Thus,
6 the covenant not to sue set forth in paragraph IV shall no affect
7 the plaintiff's right to bring future civil or administrative
8 actions for legal or equitable claims against the defendants,
9 third-party defendants and any other person for any further
10 response activity pursuant to sections 104, 106 and 107 of
11 CERCLA, 42 U.S.C. §§ 9606, 9607, or any other applicable laws; to
12 obtain access to the site in connection with such further
13 response; to recover costs incurred by the plaintiff in
14 connection with such further response; to seek a declaratory
15 judgment entitling the plaintiff to recover costs incurred in the
16 future for such further response actions at the site; or to seek
17 injunctive relief.

18 VI. PARTIES RESERVATION OF RIGHTS

19 The parties reserve all rights that each may have to
20 assert claims against non-settling parties or other persons or
21 corporations not named in this Consent Decree in connection with
22 the site.

23 VII. NO ADMISSION OF LIABILITY

24 Neither the agreement to, nor the entry of, this Consent
25 Decree, shall be construed as an acknowledgement by the parties
26 that the release or threatened release in this case constituted
27 an imminent and substantial endangerment to the public health or
28 welfare or the environment. The participation by any of the

1 parties in this Consent Decree shall not be considered an
2 admission of liability for any purpose, and that fact of such
3 participation shall not be admissible in any judicial or
4 administrative proceeding, including a subsequent proceeding
5 under this section.

6 VII. NO ADMISSION OF LIABILITY

7 Neither the agreement to, nor the entry of, this Consent
8 Decree, shall be construed as an acknowledgement by the parties
9 that the release or threatened release in this case constituted
10 and imminent and substantial endangerment to the public health or
11 welfare or the environment. The participation by any of the
12 parties in this Consent Decree shall not be considered an
13 admission of liability for any purpose, and the fact of such
14 participation shall not be admissible in any judicial or
15 administrative proceeding, including a subsequent proceeding
16 under this section.

17 VIII. CONTRIBUTION PROTECTION

18 Pursuant to section 113(b) of the Superfund Amendment and
19 Reauthorization Act of 1986 ("SARA"), P.O. 99-499, which amends
20 CERCLA by adding subsection 113(f)(2), the settling parties shall
21 not be liable for claims for contribution regarding the costs
22 incurred by the plaintiff in connection with the cleanup action
23 referred to in paragraph 1 herein.

24 IX. CLAIMS AGAINST THE FUND

25 In consideration of the entry of this Consent Decree, the
26 settling defendants and third-party defendants agree not to
27 assert any claims or demands against EPA or the Hazardous
28 Substance Superfund for any costs or expenses incurred by any of

1 the respective settling defendants and third-party defendants in
2 connection with the Government's cleanup action referred to in
3 paragraph 1.

4 X. NOTIFICATION

5 Should any of the settling defendants or third-party
6 defendants institute any suit or claim for contribution against a
7 non-settling party or other person, the party instituting the
8 suit agrees to notify EPA and the United States Department of
9 Justice at the time of filing of such suit or claim. Notice
10 shall be satisfied by registered mail sent to:

11 Quentin Pair
12 Environmental Enforcement Section
13 Land and Natural Resources Division
14 U.S. Department of Justice
15 P.O. Box 7611
16 Ben Franklin Station
17 Washington, D.C. 20530

15 and

16 Regional Counsel
17 U.S. Environmental Protection Agency
18 Region - IX
19 215 Fremont Street
20 San Francisco, CA 94105

19 IX. LODGING OF CONSENT DECREE

20 Pursuant to section 122(i) of SARA and the provisions of
21 28 C.F.R. § 50.7, this Consent Decree will be lodged with the
22 Court for thirty (30) days to allow public comment prior to
23 submission to the Court for entry.

24 XII. EXECUTION

25 The Consent Decree may be executed in two or more
26 counterparts, each of which shall be deemed an original, but
27 together shall constitute one and the same instrument.

1 DATED: This 5th day of May, 1988.

2 **David V. Kenyon**

3 UNITED STATES DISTRICT JUDGE

4
5 CONSENT

6 We consent to entry of this Consent Decree.

7 FOR PLAINTIFF UNITED STATES OF AMERICA:

8 
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10 ROGER J. MARZULLA

11 Assistant Attorney General
12 Land & Natural Resources Division
13 Department of Justice
14 Washington, D.C. 20530

15 ROBERT C. BONNER

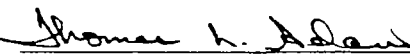
16 United States Attorney

17 FREDERICK M. BROSI~~O~~, JR. *1813*

18 Assistant United States Attorney

19 by: Robert B. Briggs

20 Assistant United States Attorney

21 

22 THOMAS L. ADAMS, JR.

23 Assistant Administrator

24 Enforcement & Compliance Monitoring

25 U.S. Environmental Protection Agency

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27 JOHN C. Wise

28 Acting Regional Administrator

U.S. Environmental Protection Agency

Region IX

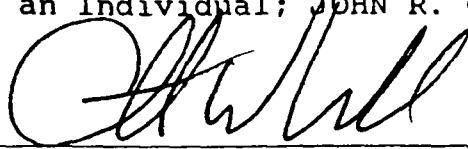


QUENTIN C. PAIR, Attorney

Environmental Enforcement Section

Land & Natural Resources Division

1 FOR DEFENDANT JOHN R. CAUFFMAN, an Individual; JOHN R. CAUFFMAN,
2 Trustee:

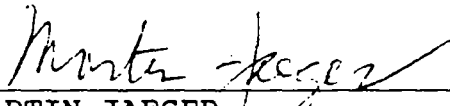


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4 ~~LISA WINFIELD~~ ARTHUR W. VANCE aw
HAGENBAUGH & MURPHY



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6
7 JANICE PATRONITE
WEIL & PATRONITE

8 FOR DEFENDANTS BILL G. BOYER, JUDY BOYER, AND MARATHON CARTAGE, A
9 California Corporation:



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11 MARTIN JAEGER



12
13 RICHARD M. KOEP
14 HILL, GENSON, EVEN, CRANDALL & WADE

15 FOR THIRD-PARTY DEFENDANTS INMONT CORPORATION (INMONT DIVISION,
16 BASF CORPORATION), UNITED TECHNOLOGIES CORPORATION and CARRIER
CORPORATION:

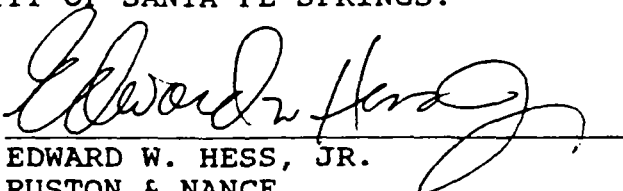


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18 DAVID T. PETERSON
19 MCCUTCHEN, BLACK, VERLEGER & SHEA

1 FOR THIRD-PARTY DEFENDANT CERRITOS VALLEY BANK:

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3 
4 ARTHUR JARVIS COHEN

5 FOR THIRD-PARTY DEFENDANT CITY OF SANTA FE SPRINGS:

6 
7 EDWARD W. HESS, JR.
8 RUSTON & NANCE

9 FOR DEFENDANTS PHILLIP HOMME COMPANY and HENRY LUNA:

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11 DANIEL L. STACK
12 MILLARD, STACK & STEVENS
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CERTIFICATE OF SERVICE BY MAIL

I, Beverly Norman, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of the United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on May 4, 1988, I deposited in the United States mails at the United States Courthouse at 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of CONSENT DECREE (PROPOSED)

addressed to SEE ATTACHED SERVICE LIST

at their last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on May 4, 1988 at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Beverly Norman
BEVERLY NORMAN

SERVICE LIST

1	ARTHUR JARVIS COHEN 11101 La Reina Avenue Post Office Box 10 Downey, CA 90241	Attorneys for Third Party Defendant CERRITOS VALLEY BANK
2		
3	EDWARD W. HESS, JR. RUSTON & NANCE, INC. 902 No. Grand Avenue Santa Ana, CA 92701	Attorneys for Third Party Defendant CITY OF SANTA FE SPRINGS
4		
5		
6	RICHARD M. KOEP HILL, GENSON, EVEN, CRANDALL & WADE 505 Shatto Place Los Angeles, CA 90020	Attorneys for Defendants and Third Party Plaintiffs BILL G. BOYER, JUDY BOYER and MARATHON CARTHAGE
7		
8		
9	JANICE M. PATRONITE WEIL AND PATRONITE Post Office Box 4747 Whittier, CA 90607	Attorneys for Third Party Defendant INTER-COMMUNITY ESCROW COMPANY
10		
11	DAVID T. PETERSON McCUTCHEN, BLACK, VERLEGER & SHEA 600 Wilshire Blvd. Los Angeles, CA 90017	Attorneys for Third Party Defendants INMONT CORPORATION, UNITED TECHNOLOGY CORPORATION and CARRIER CORPORATION
12		
13		
14	MARTIN JAEGER 10324 Balboa Boulevard Granada Hills, California 91344	Attorneys for Defendants and Third Party Plaintiffs BILL G. BOYER, JUDY BOYER and MARATHON CARTHAGE
15		
16		
17	ARTHUR VANCE HAGENBAUGH & MURPHY 3701 Wilshire Blvd., #400 Los Angeles, CA 90010	Attorneys for JOHN R. CAUFFMAN, an individual; JOHN R. CAUFFMAN trustee; and FERN P. CAUFFMAN
18		
19	DANIEL L. STACK MILLARD, STACK & STEVENS 655 South Hope Street 12th Floor Los Angeles, CA 90017-3211	Attorneys for PHILLIP HOMME and HENRY LUNA
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21		
22	FRANK L. STANKEVICH, JR. 1716 Kellogg Street, Apt. D Anaheim, CA 92807	
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